

1-1 By: West S.B. No. 1235  
 1-2 (In the Senate - Filed March 6, 2013; March 13, 2013, read  
 1-3 first time and referred to Committee on Jurisprudence;  
 1-4 April 8, 2013, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 6, Nays 0; April 8, 2013,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1235 By: West

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to guardianships, including assessments for and provision  
 1-20 of guardianship services by the Department of Aging and Disability  
 1-21 Services.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Subsection (a), Section 59.006, Finance Code, is  
 1-24 amended to read as follows:

1-25 (a) This section provides the exclusive method for  
 1-26 compelled discovery of a record of a financial institution relating  
 1-27 to one or more customers but does not create a right of privacy in a  
 1-28 record. This section does not apply to and does not require or  
 1-29 authorize a financial institution to give a customer notice of:

1-30 (1) a demand or inquiry from a state or federal  
 1-31 government agency authorized by law to conduct an examination of  
 1-32 the financial institution;

1-33 (2) a record request from a state or federal  
 1-34 government agency or instrumentality under statutory or  
 1-35 administrative authority that provides for, or is accompanied by, a  
 1-36 specific mechanism for discovery and protection of a customer  
 1-37 record of a financial institution, including a record request from  
 1-38 a federal agency subject to the Right to Financial Privacy Act of  
 1-39 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the  
 1-40 Internal Revenue Service under Section 1205, Internal Revenue Code  
 1-41 of 1986;

1-42 (3) a record request from or report to a government  
 1-43 agency arising out of:

1-44 (A) the investigation or prosecution of a  
 1-45 criminal offense;

1-46 (B) ~~or~~ the investigation of alleged abuse,  
 1-47 neglect, or exploitation of an elderly or disabled person in  
 1-48 accordance with Chapter 48, Human Resources Code; or

1-49 (C) the assessment for or provision of  
 1-50 guardianship services under Subchapter E, Chapter 161, Human  
 1-51 Resources Code;

1-52 (4) a record request in connection with a garnishment  
 1-53 proceeding in which the financial institution is garnishee and the  
 1-54 customer is debtor;

1-55 (5) a record request by a duly appointed receiver for  
 1-56 the customer;

1-57 (6) an investigative demand or inquiry from a state  
 1-58 legislative investigating committee;

1-59 (7) an investigative demand or inquiry from the  
 1-60 attorney general of this state as authorized by law other than the

2-1 procedural law governing discovery in civil cases; or  
2-2 (8) the voluntary use or disclosure of a record by a  
2-3 financial institution subject to other applicable state or federal  
2-4 law.

2-5 SECTION 2. Section 1101.104, Estates Code, as effective  
2-6 January 1, 2014, is amended to read as follows:

2-7 Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING  
2-8 INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. If an intellectual  
2-9 disability [~~mental retardation~~] is the basis of the proposed ward's  
2-10 alleged incapacity, the court may not grant an application to  
2-11 create a guardianship for the proposed ward unless the applicant  
2-12 presents to the court a written letter or certificate that:

2-13 (1) [~~a written letter or certificate that:~~

2-14 [~~(A)~~] complies with Sections 1101.103(a) and

2-15 (b) [~~, and~~

2-16 [~~(B) states that the physician has made a~~  
2-17 ~~determination of mental retardation in accordance with Section~~  
2-18 ~~593.005, Health and Safety Code]; or~~

2-19 (2) shows that not earlier than 24 months before the  
2-20 hearing date [~~both~~]:

2-21 (A) [~~written documentation showing that, not~~  
2-22 ~~earlier than 24 months before the hearing date,~~] the proposed ward  
2-23 has been examined by a physician or psychologist licensed in this  
2-24 state or certified by the Department of Aging and Disability  
2-25 Services to perform the examination, in accordance with rules of  
2-26 the executive commissioner of the Health and Human Services  
2-27 Commission governing examinations of that kind, [~~, and~~

2-28 [~~(B)~~] the physician's or psychologist's written  
2-29 findings and recommendations include [~~, including a statement as to~~  
2-30 ~~whether the physician or psychologist has made] a determination of~~  
2-31 an intellectual disability; or

2-32 (B) a physician or psychologist licensed in this  
2-33 state or certified by the Department of Aging and Disability  
2-34 Services to perform examinations described by Paragraph (A) updated  
2-35 or endorsed in writing a prior determination of an intellectual  
2-36 disability for the proposed ward made by a physician or  
2-37 psychologist licensed in this state or certified by the department  
2-38 [~~mental retardation in accordance with Section 593.005, Health and~~  
2-39 ~~Safety Code].~~

2-40 SECTION 3. The changes in law made by this Act to Section  
2-41 1101.104, Estates Code, as effective January 1, 2014, apply only to  
2-42 an application to create a guardianship filed on or after the  
2-43 effective date of this Act. An application to create a guardianship  
2-44 filed before the effective date of this Act is governed by the law  
2-45 in effect on the date the application was filed, and the former law  
2-46 is continued in effect for that purpose.

2-47 SECTION 4. To the extent of any conflict, this Act prevails  
2-48 over another Act of the 83rd Legislature, Regular Session, 2013,  
2-49 relating to nonsubstantive additions to and corrections in enacted  
2-50 codes.

2-51 SECTION 5. (a) Except as provided by Subsection (b) of  
2-52 this section, this Act takes effect January 1, 2014.

2-53 (b) Subsection (a), Section 59.006, Finance Code, as  
2-54 amended by this Act, takes effect September 1, 2013.

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